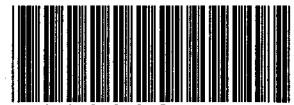


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BEFORE THE ARIZONA CORPORATION COMMISSION

305R

MARC SPITZER
CHAIRMAN
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER
KRISTIN K. MAYES
COMMISSIONER

Arizona Corporation Commission

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IN THE MATTER OF THE
JOINT APPLICATION OF TOUCH
AMERICA, INC. TO SELL AND
TRANSFER TO 360NETWORKS
(USA) INC. CERTAIN LIT FIBER
ASSETS IN ARIZONA AND
RELATED CUSTOMER CONTRACTS
DEPENDENT ON THOSE
FACILITIES

DOCKET NO. T-04011A-03-0749
T-03777A-03-0749

**RESPONSE OF COMMISSION STAFF TO MOTION
OF 360NETWORKS (USA) REGARDING PERFORMANCE BOND**

I. Introduction

On February 19, 2004, 360Networks (USA) Inc. ("360Networks") filed a motion for an extension of time (until April 19, 2004) to comply with the requirement in Decision No. 66737 to file proof of a performance bond. 360Networks also moved the Commission to amend Decision No. 66737, to permit it to provide a letter of credit or other financial device in lieu of a bond, in the event that it is unable to procure a performance bond as required.

II. Discussion

Decision No. 66737 conditionally granted the application of Touch America, Inc. to sell and transfer to 360Networks certain of its lit fiber assets in Arizona and related customer contracts dependent upon those facilities. The grant of the application is conditioned upon 360Networks filing within thirty (30) days of the Decision, proof of a \$100,000.00 performance bond. Because the Company is having difficulty procuring the bond, it is seeking alternatives to the bonding requirement.

A.A.C. R14-2-1105 governs the grant of CC&Ns to telecommunications carriers

1 providing competitive services, including performance bond requirements, where necessary.
2 A.A.C. R14-2-1105(D) provides in relevant part that "In appropriate circumstances, the
3 Commission may require, as a precondition to certification, the procurement of a performance
4 bond sufficient to cover any advances or deposits the telecommunications company may collect
5 from its customer or order that such advances or deposits be held in escrow or trust."

6 The only alternative to a performance bond specifically provided for in A.A.C. R14-2-
7 1105(D) is to allow the Company to put any advances or deposits it collects from customers in
8 an escrow account or trust. While Staff would not object to the Company's use of an escrow
9 account or trust as provided for under the rules, there would have to be appropriate compliance
10 mechanisms put in place to ensure that any contractual advances or deposits are appropriately
11 included in the account and that the Company is at all times complying with the terms of any
12 escrow or trust requirement.

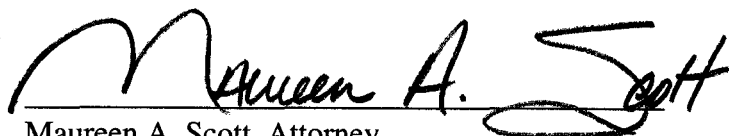
13 The alternative offered by the Company, i.e., a letter of credit, is not provided for in
14 A.A.C. R14-2-1105(D) and, therefore, Staff does not support an amendment of Decision 66737
15 to permit the Company to satisfy the bonding requirement through a letter of credit.

16 **III. Conclusion**

17 For the reasons set forth above, Staff does not oppose the limited extension of time (until
18 April 19, 2004) requested by the Company to provide proof of a performance bond or to put an
19 alternative mechanism permitted by Commission rules in place. Staff would not object to
20 amendment of Decision 66737 to allow the Company to use an escrow or trust account. Finally,
21 Staff objects to the Company's proposed use of a letter of credit, because that is not an option
22 that is currently permitted under A.A.C. R14-2-1105.

23 RESPECTFULLY submitted this 19th day of April, 2004.

24 STAFF OF THE ARIZONA CORPORATION COMMISSION

25 
26

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1 The original and thirteen (13) copies of
2 the foregoing were filed this
19th day of April, 2004 with:

3 Docket Control
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5 Phoenix, Arizona 85007

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